

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: AUG 17 1999

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

[REDACTED]

Employer Identification Number: [REDACTED]

Dear Sir or Madam:

This is in reply to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

We have reviewed the information you have submitted and have concluded that you do not qualify for recognition of exemption under section 501(c)(3) of the Code because you do not satisfy either the organizational or operational tests of section 501(c)(3). In addition, you are operating for the private benefit of your sole officer and director, [REDACTED] by reason of your involvement in the housing project or projects you have entered into with companies which are apparently owned or controlled by him.

The information you have submitted establishes that the local county government has expressed an interest in assuring the existence of a supply of desirable and affordable housing for persons employed in [REDACTED], senior citizens, the disabled, and other qualified persons in order to establish a balanced community. In order to accomplish this goal guidelines have been established by the county to review land use applications, establish affordable rental rates and sales prices, establish criteria for admission and occupancy and to develop and prioritize current and long range housing programs. These guidelines envision a certain amount of private sector involvement.

The housing guidelines establish various categories of property purchasers. These categories are delineated numerically 1 through 4 and the special resident occupied category (hereinafter referred to as RO). These numbers are equated in the county housing guidelines to low, low-moderate, upper moderate, and middle income levels. In addition to income levels, maximum unit prices have been set by the county.

You were established in [REDACTED] for the purpose of acquiring, holding, renting, transferring, encumbering and developing real property and improvements for the purpose of providing affordable housing, open space, parks, golf courses, recreational facilities, and other similar benefits for persons in [REDACTED]. In your letter of [REDACTED] you have stated that you are providing housing to low income and truly needy families.

[REDACTED]

In your letter of [REDACTED] you state that your sole activity is your involvement in a housing project to develop a deed-restricted affordable housing community on the property commonly known as the [REDACTED] Corporation hereinafter referred to as [REDACTED] in [REDACTED]. Other information you have submitted establishes that in [REDACTED] you were deeded [REDACTED] acres of the [REDACTED] and later received quit claim deeds to a partial interest in [REDACTED] rental units which were being sold by [REDACTED] to the current tenants.

You have stated that your housing projects will follow the county affordable housing guidelines. You recognize that these guidelines do not satisfy the Service's charitable housing guidelines as set forth in Rev. Proc. 96-32, 1996-1 C.B. 717 or those set by the Federal Department of Housing and Urban Development (HUD). In your letter of [REDACTED] you state that you have departed from HUD guidelines to reflect operational experience and account for local conditions. These conditions include the large amount of income earned elsewhere by wealthy [REDACTED] residents and the extremely high prices of the local real estate market. In your letter of [REDACTED] when asked for a census of the housing projects you have been involved in by income level, you state that you do "not possess, or have the ability to secure, statements as to their actual financial condition, other than the fact it is clear they were truly meritorious, low income, local resident employees." You also state that through this program you are acting to lessen neighborhood tension and eliminate discrimination prejudice and community deterioration. However, you have provided no information describing your precise efforts in this regard.

[REDACTED] is a for profit corporation which owns land adjacent to your properties. It is the successor in interest to a [REDACTED] company of the same name. Your president and apparently sole member since [REDACTED] is the president of both [REDACTED] and [REDACTED]. [REDACTED] has an exclusive contract with you to build housing on the [REDACTED] acreage you hold. You have represented that [REDACTED] also has a contract with [REDACTED] to develop its holdings. In [REDACTED] you amended your Articles of Incorporation to require that if you receive the loan to develop the land you own you will only be permitted to engage in such activities as are incident to the ownership, management, and operation of the property in accordance with the exclusive contracts you have with [REDACTED].

You, [REDACTED] and [REDACTED] have entered into a loan agreement with [REDACTED] to finance a portion of the development of the properties held by [REDACTED] and you. Section 10.16 of this agreement provides that the obligation to repay the loan is joint and severable and the Lender may look to any or all of the borrowers for the performance of any or all obligations. In your letter of [REDACTED] you refer to the [REDACTED] project as part of a joint development application by [REDACTED] and [REDACTED]. In addition, in your [REDACTED] letter to [REDACTED] that what appeared initially to be the separate development of two pieces of property has now become a "joint application for the development of affordable housing."

As indicated above, this development project involves two separate parcels of land and includes one separately identifiable special program. The first parcel of land is the 65 acres of land which was granted to you, referred to as Parcel B of the [REDACTED]. As previously stated, this land is partial security for the loan received from [REDACTED]. The second identifiable parcel of land is the remaining 100 acres of property held by [REDACTED]. This land is adjacent to your holdings. As stated above [REDACTED] is a for profit company and your president, [REDACTED] is also its president.

[REDACTED]

The special program involves your proposal to offer to convey at least 20 percent of all lots developed on the [REDACTED] to volunteers and low-paid employees of essential community non-profit and public service organizations. All the lots will be provided free of charge and you will bear the cost of construction. You indicate that in most instances you will not be involved in selecting recipients for this program. [REDACTED] has signed copies of all the correspondence you have submitted regarding this program.

In addition to your involvement in the above described housing development project, which is still in the formative stage, your primary activity has been your involvement in the sale of rental property held by [REDACTED]. These rental properties were sold in fee by [REDACTED] primarily to the then current tenants under the RO section of the County Affordable Housing Program. The Summary of Subdivision Sales indicates that some of the properties were sold to qualified category employees (middle income level or higher). Under the county guidelines there were no income restrictions for participation in the RO program. However, there were limits on what a unit would cost. In addition, the properties on [REDACTED] were subject to certain extra restrictions, not pertinent to this ruling, which were imposed by [REDACTED]. It appears that to facilitate this program you were given quit claim deeds by [REDACTED] for the interests it had retained, after the sale to the tenants, in the approximately 46 housing units which [REDACTED] had sold under the RO program. These quit claim deeds were subsequently released by you to the purchasers of the rental units.

In your letter of [REDACTED] you described your precise role in this program as having made "up to [REDACTED] gifts of up to 20% interest in affordable houses and land to existing tenants and/or qualified employees . . ." These "gifts", also referred to as "grants" have been described by you in various ways. In one case you describe these "gifts" as being "in the form of fees and expenses to further the effectuation of the gifts of land". You also describe your activities as receiving "tax deductible gifts of like amounts of land, buildings and cash which is represented in the difference between gross receipts and net receipts by the giving entity, [REDACTED] . . ." In your letter of [REDACTED] you describe the transaction as [REDACTED] contributing the 20% interest in these properties to the purchasers of the properties. Elsewhere, this transfer of interest is described as a gift by the landowner [REDACTED] to you and a subsequent grant by you to the purchaser. It is also clear from the deeds that you were required to make a payment to the purchaser of the property to enable the transaction to be completed. Exhibit A, Addendum #5 to the first deed you submitted states that "Buyer's performance hereunder is contingent upon Buyer's receipt at, or prior to, closing of a gift of an undivided twenty percent (20%) interest in and to the Property from [REDACTED], a [REDACTED] nonprofit corporation. . ."

In your letter of [REDACTED] you state that the size of the "gift" was established through negotiations between [REDACTED] and each individual home buyer. You also represent that in each instance the gift included the payment of closing cost and points by [REDACTED]. This appears to be contradicted by information in the Summary of Subdivision sales which indicates that the buyer paid closing costs on several occasions. The amount of the gift is explained in your letter of [REDACTED] as the difference between gross sales proceeds and net sales proceeds. This letter also states that these gifts and the size of these gifts was approved by [REDACTED] in [REDACTED].

You have provided sales documents on two of the properties. However, we only have the quit claim deed from one of these two transactions. This quit claim deed was given to you by [REDACTED] in [REDACTED] but the property appears to have been sold under the RO program prior

[REDACTED]

to this date. A review of the two representative deeds reflects that in one case the deed states that the buyer received 100% interest in the property from [REDACTED]. The other does not indicate the amount of property interest received.

In your letter of [REDACTED], you state that 14 of the previously discussed gifts were made to the local governmental housing authority, which then purchased the units and leased them with an option to purchase to significantly financially distressed families. However, the Summary of Subdivision Sales indicates that the properties purchased by the housing authority have or will be sold as either RO or Category 4 sales.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-(a)(i) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in that section. If an organization does not meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-(b)(i)(i) of the regulations provides that in general an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-(b)(i)(iii) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business" or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

Section 1.501(c)(3)-(b)(i)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-(c)(i) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An

organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(iii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration and lessening the burdens of government.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), T.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In EST of Hawaii v. Commissioner, 71 TC 1067 (1971) exemption was denied to an organization engaged in training, seminars and lectures, in the areas of intrapersonal awareness and communication. Such activities were conducted under licensing arrangements with for-profit organizations. The activity served the commercial purposes of the for-profit corporations.

Rev. Rul. 70-585, 1970-2 C.B. 115 provides that nonprofit housing organizations created to aid low and moderate income families by lessening neighborhood tensions, eliminating prejudice and discrimination, and combating community deterioration may qualify for exemption under section 501(c)(3) of the Code.

The Revenue Ruling provides several illustrations of organizations which might qualify for exemption under section 501(c)(3). In situation #1 an organization providing homes for low income families who otherwise could not afford them was considered to be relieving the poor and distressed and qualify for exemption under section 501(c)(3). In situation #2 an organization formed to ameliorate the housing needs of minority groups by building housing units for sale to persons of low and moderate income on an open occupancy basis was determined to qualify for exemption under section 501(c)(3). In situation #3 an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community was held to qualify for exemption under section 501(c)(3). The organization's purposes and activities combat community deterioration by assisting in the rehabilitation of an old and run-down residential

[REDACTED]

area, they are charitable within the meaning of section 501(c)(3) of the Code. On the other hand, situation #4 held that an organization formed to build new housing facilities for the purpose of helping families to secure decent, safe, and sanitary housing at prices they can afford did not qualify for exemption under section 501(c)(3). The organization planned to erect housing that it to be rented at cost to moderate income families. Because the organization's program did not provide relief to the poor or to carry out any other charitable purpose within the meaning of the regulations applicable to section 501(c)(3) of the Code, it was not entitled to exemption from Federal income tax under section 501(c)(3) of the Code.

Rev. Ruls. 85-1, 1985-1 C.B. 177, and 85-2, 1985-1 C.B. 178 describe organizations that are considered to be lessening the burdens of government and qualify for exemption under section 501(c)(3) of the Code. These revenue rulings set forth a 2 part test to be used in making this determination. This test requires a determination as to whether a governmental unit considers the organization's activities to be its burden and whether these activities actually lessen the burden of the governmental unit. This requires an objective manifestation by the local government that it considers the organizations activities to be its burden and a factual analysis to determine whether the burden is actually being lessened.

Rev. Proc. 96-32, 1996-1 C.B. 717, provides guidance on the qualification under section 501(c)(3) for organizations engaged in low income housing. The Rev. Proc. provides that an organization will be considered to relieve the poor and distressed if it establishes that 75 percent of the units are occupied by residents that qualify as low-income and that either (a) 20 percent of the units are occupied by very low-income residents or (b) 40 percent of the units are occupied by residents that do not exceed 120 percent of the area's very low-income limited. In addition, the units must be affordable to these residents. This will ordinarily be satisfied by adopting a government-imposed rent restriction.

Section 4 of this revenue procedure provides that even if an organization does not satisfy the mechanical safe harbor guidelines, a special facts and circumstances test may be used to establish that a housing organization is operating to relieve the poor and distressed and qualify for exemption under section 501(c)(3). The facts and circumstances discussed in this section of the revenue procedure include, only limited deviation from the safe harbor percentages; limitations on the amount of rent or mortgage payments or restrictions on the housing to ensure it remains affordable; community or government participation; additional social services for the residents and an established relationship with an existing 501(c)(3) organization.

Your Articles of Incorporation state that your purposes are to provide affordable housing and also permit you to provide open space, parks, golf courses, recreational facilities, and other similar benefits for persons in Pitkin County. Providing social and recreational facilities exceeds the limitations set by the purposes clause of the organizational test of section 501(c)(3)-(b)(1) of the regulations. Accordingly, we have concluded that you are not organized exclusively for charitable or other purposes which would qualify you for exemption from Federal income tax under section 501(c)(3) of the Code.

In addition, in [REDACTED] you amended your Articles of Incorporation to require that if you receive the loan to develop the land you will only be permitted to engage in such activities as are incident to the ownership, management, and operation of the property in accordance with the exclusive contracts you have with [REDACTED]. As previously noted, [REDACTED] is a for-profit organization the president of which is your sole member and president, [REDACTED]. By

[REDACTED]

requiring you to contract with a for-profit company owned by your president you are operating, in part, for the private benefit of that corporation and Mr. Musick. Section 1.501(c)(3)-(d)(ii)(iii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Because your governing instrument requires you to contract with this company it does not satisfy the requirements of the section 501(c)(3) organizational test.

Furthermore, in order for you to establish that you qualify for recognition of exemption under section 501(c)(3) of the Code you have the burden to establish that you clearly are and will continue to be operating exclusively for charitable purposes within the meaning of section 501(c)(3). See Harding Hospital, Inc. v. United States, supra. In Old Dominion Box Co. v. United States, supra, the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose. Exemption is denied if it appears that noncharitable or noneducational activities are more than insubstantial. See Batter Business Bureau of Washington, D.C., Inc. v. United States, supra.

The information you have submitted establishes that you were created to provide affordable housing for individuals employed in the [REDACTED] area. For ease of discussion we are treating the various aspects of the development plan for the [REDACTED] as separate programs.

The sole program that has been accomplished to date involved your assisting [REDACTED] a related for-profit organization, in a program designed to allow tenants on property owned by [REDACTED] purchase the housing units they were previously renting. Another program involves developing the remaining [REDACTED] property including both your holdings and the property still owned by [REDACTED]. The final program you have described involves providing housing to charity volunteers and public service employees.

The first project involved the sale of rental property to the then current occupants. [REDACTED] had some rental units on its site. It decided to sell these units to the then current residents under a social program established by the local government. This project was approved by the local housing authority with certain restrictions. Your participation in this program was to make "gifts" or "grants" of certain interests in the housing units and land or money to the individuals purchasing housing units from [REDACTED]. It appears that these funds or rights, which appear to have been donated to you by [REDACTED] through the quit claim deeds, represent the difference between gross sales proceeds and net sales proceeds. It is not clear from the financial information submitted whether an actual transfer of monies ever occurred. However, it is clear from the two representative deeds you provided that the individual's right to purchase the property was conditioned upon your making this "gift" or "grant" to the prospective purchaser. It is also appears that [REDACTED] donation of quit claims to you enabled or assisted it in selling the properties. In addition, it is unclear whether these quit claim deed had any value. For example the deed of sale of one piece of property indicated that [REDACTED] sold 100 percent of its interest to the purchaser. Therefore, even though you had a quit claim deed on this piece of property it may have been worthless because [REDACTED] appeared to have already sold its entire interest in this property. However, even though nothing of value may have been transferred, it appears that your involvement may have enabled [REDACTED] to be able to indirectly charge more for these units than was permissible under the either the housing guidelines or [REDACTED]. Accordingly, it appears that through your participation in this transaction, you were serving the private interest of [REDACTED]. Serving the private interests of a for-profit corporation is a substantial nonexempt

[REDACTED]

activity. See EST of Hawaii v. Commissioner, supra, and Old Dominion Box Co. v. United States, supra.

In addition, the information you have submitted establishes that you are bound to an exclusive contract with [REDACTED] a for-profit corporation. This contract was unilaterally set up by your President who is also the President of [REDACTED]. You and the two related for-profit companies have also mutually entered into an agreement with [REDACTED] to borrow money to develop all the [REDACTED] properties. Such an arrangement serves the private interest of [REDACTED] and [REDACTED] and precludes exemption.

You have stated that the persons purchasing housing through this resident occupied program were in low income brackets. However, you have not provided any information to confirm this assertion. In your letter of [REDACTED] you state that you do "not possess, or have the ability to secure, statements as to their actual financial condition. . .". In fact the submitted information regarding the sales program establishes that the purchasers of the housing units under the resident occupied program included more than an insubstantial number of category 4 (middle income or better) wage earners. Accordingly, it is clear that you have neither satisfied the income guidelines set forth in Rev. Proc. 96-32, supra, or those set by HUD. Furthermore, there is no information establishing that your participation in the RO program satisfies the alternative facts and circumstances test in Rev. Proc. 96-32, supra. You have not shown any community or government involvement, there are no special services provided residents and you have submitted no information establishing only minor variation from the safe harbor guidelines.

Accordingly, irrespective of the nature of your actual involvement in this program, your activities do not benefit a charitable class or accomplish a charitable purpose. Furthermore, they benefit the private interests [REDACTED] and [REDACTED]. Therefore, your involvement in this program does not accomplish a charitable purpose which could enable you to qualify you for exemption under section 501(c)(3) of the Code. Inasmuch as this involvement appears to more than an insubstantial part of your activities, you had a more than insubstantial nonexempt activity and cannot qualify for exemption under section 501(c)(3) of the Code. See Batter Business Bureau of Washington, D.C., Inc. v. United States, supra.

We recognize that 14 units involved in this program were sold to the local government and then relet to the tenants or other individuals. However, these units amount to but a minor portion of the overall project. Because the non-charitable aspect of your participation in the RO program was more than an insubstantial portion of your program, you do not qualify for exemption under section 501(c)(3) of the Code.

As originally established, you contemplated constructing affordable housing on the 65 acres which had been donated to you by [REDACTED]. However, it now appears that you are engaged in a "joint application for the development of affordable housing" involving both your holdings and the [REDACTED] property and utilizing the services of [REDACTED].

Both [REDACTED] and [REDACTED] are for-profit corporations. You are bound by your Articles of Incorporation to contract with [REDACTED] to build housing on the property you own. In addition, you, [REDACTED] and [REDACTED] are also bound to the loan agreement with [REDACTED] and are jointly and severally liable for this debt. This means that all of your assets are dedicated to help two for-profit corporations meet their obligations under this loan agreement. Operating for the private benefit of a for-profit corporation is not a charitable

[REDACTED]

activity. Accordingly, we have concluded that you have not satisfied the requirements of the operational test set forth in section 1.501(c)(3)-(d)(I)(ii) of the regulations.

A more recently proposed aspect of your program involves providing housing to volunteers and low-paid employees of essential community non-profit and public service organizations. In your letter of [REDACTED] you state that you intend to convey at least 20 percent of all lots developed on the [REDACTED] for such purposes. Volunteers and low-paid employees of essential community non-profit and public service organizations are not necessarily members of a charitable class. Furthermore, although the lots will be provided free of charge, you will bear the cost of construction. This means that as established in your amended Articles of Incorporation, [REDACTED] may profit from the construction project. Furthermore, you will not be involved in selecting the individuals who will receive housing through this program. Therefore, you cannot ensure that the sales will be made only to members of a charitable class. In addition, this appears to be, at least in part, a project of [REDACTED] because they appear to own at least some of the property and copies of all the correspondence you have submitted regarding this program have been [REDACTED] on behalf of [REDACTED]. Therefore, this is not a qualifying section 501(c)(3) charitable program because a charitable class is not being served and because it, in part, serves the private interests of [REDACTED] and [REDACTED].

Furthermore, this aspect of the development only includes 20 percent of the overall project. Therefore, even if it qualified as a charitable program, more than an insubstantial part of your activities still do not accomplish a charitable purpose.

Accordingly, under the facts presented the described program to provide housing to charity volunteers and public service employees does not establish that you qualify for exemption under section 501(c)(3) of the Code.

On the other hand, organizations operating to relieve the burdens of government may qualify for recognition of exemption under section 501(c)(3) of the Code. Rev. Ruls. 85-1 and 85-2, supra, set forth a 2 part test to be used in determining whether an organization is acting to lessen the burdens of government and can qualify for exemption under section 501(c)(3). This test requires a determination as to whether a governmental unit considers the organization's activities to be its burden and whether these activities actually lessen the burden of the governmental unit. This requires an objective manifestation by the local government that it considers the organization's activities to be its burden and a factual analysis to determine whether the burden is actually being lessened. Here the local government has indicated an interest in establishing affordable housing. However, by merely establishing affordable housing guidelines or approving zoning restrictions the government has shown that it considers your activities to be its burden. Accordingly, we are unable to conclude that your activities can be considered charitable on this basis.

You have also stated that other grounds for exemption may exist because your activities act to lessen neighborhood tensions and eliminate discrimination prejudice and community deterioration. See Rev. Rul. 70-585, supra. However, you have not provided any information to demonstrate that your proposed activities will have the desired effect. Your programs appear to be closer to the example described in situation #4 than any other situation. Therefore, as above you have not established that you qualify for exemption under section 501(c)(3) of the Code.

Accordingly as previously stated we have concluded that you do not qualify for recognition of exemption under section 50(c)(3) of the Code because you do not satisfy either the organizational or operational tests of section 50(c)(3).

Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principle officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principle officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director. Thereafter, any questions about your federal tax status should be addressed to that office. Also, the appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2